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## THE RELATIONSHIP BETWEEN MUNICIPAL EMPLOYMENT AND WORKMEN'S COMPENSATION

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WITH the advent of a system of workmen's compensation laws, numerous troublesome problems arose to vex both the judicial and the legislative departments of the governments of the several states. It was to be expected that such an important scheme of protection for labor, utterly without precedent in the history of jurisprudence, should develop conflicts, both external and internal. External conflicts were promptly resolved by judicial declarations that legislation of this character was a legitimate exercise of the police power of the state.<sup>1</sup> They have since ceased to exist. Internal conflicts, on the other hand, are not so easily resolved, as the volume of litigation and the frequency of amendment well testify. Perhaps one of the most serious of such problems is that of determining just what classes of persons come within the application of any given statute, either as employees or employers. Municipal employment is but a phase of that problem. It is, however, one of the most difficult phases to solve.

Municipalities are now, as a general proposition, regarded as falling within the ambit of workmen's compensation legislation since they are definitely "employers" in the sense that they hire the services of thousands of persons. Their workers may well claim to be "employees" inasmuch as they labor for hire rather than engage in independent callings. Yet the basic philosophy of compensation belies

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<sup>1</sup> *Borgnis v. Falk Co.*, 147 Wis. 327, 133 N.W. 209, 37 L.R.A. (N.S.) 489 (1911); *Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N.E. 211, Ann. Cases 1915A 241 (1914).

such construction. That industry will produce a certain number of industrial casualties in any given period of time is a well-known fact. That industry should pay compensation for such economic loss, regardless of legal liability, as a necessary incident to conducting its operations, is now an accepted premise for any theory of compensation. Society should bear the cost of producing the goods which society demands. Government, on the other hand, though it involves public employment, produces no "goods" in the sense originally understood by the framers of workmen's compensation laws. The earlier laws, therefore, either omitted the state and its various political subdivisions from coverage, or kept such coverage within narrow bounds. Such philosophy might, then, be expected to have some bearing on both the subsequent statutory enactments or amendments and the case law on the subject of whether or not the political unit is an "employer" and its workers "employees" within the meaning of any given act.

As in any problem which has its origin in statutory enactment, the prime concern is the language of the act itself for there will lie the first step in resolving the problem of the right of a municipal employee to compensation for injury arising out of and in the course of employment. It may be generally stated that most acts are now so worded as to include municipalities in the class of employers, though many permit the municipality to reject its terms. If rejection has occurred, the answer to the problem is at once apparent. If such is not the case, a second step will require the determination of the subordinate problem as to whether the municipality is an "employer" as to all of its workers, or only as to a limited group. Many of the statutes make a distinction between workers in ordinary employment and those engaged in hazardous or extra-hazardous pursuits. Another basis for classification divides employees performing governmental functions from those carrying out the proprietary functions of the municipality, the former being excluded from coverage granted to the latter.

Perhaps a third step will require a determination as to whether or not the statute creates a further division between workers in the common sense of the term and "officials"

elective or appointive. After analysis of this nature has occurred, there will still remain the necessity for investigation of the case law of any given state to ascertain whether or not there are any other exceptions as to certain types or classes of municipal workers. Not until these questions have been answered is it possible to say whether any given municipal employee is covered by the provisions of any given act.

To illustrate the apparent confusion which exists in this field, a survey of existing legislation discloses that while virtually all of the statutes include municipalities within the generic term of employer,<sup>2</sup> some of the statutes impose compulsory participation by the municipality,<sup>3</sup> though most make the act elective.<sup>4</sup> If not totally elective, then the act is compulsory as to hazardous or extra-hazardous occupations and elective as to the rest;<sup>5</sup> or automatic in its operation but containing provisions allowing the employer and employee to reject its application by following certain procedure.<sup>6</sup> Still other statutes are silent on the subject of whether or not they are mandatory or elective.<sup>7</sup> There may also be distinctions drawn between classes of hazardous work, as for example between those engaged in "any of the hazardous occupations"<sup>8</sup> or only those engaged in "manual or mechanical

<sup>2</sup> Texas and Arkansas do not, while Mississippi has no workmen's compensation statute for either public or private employment.

<sup>3</sup> Compulsory statutes are found in California, Georgia, Indiana, Iowa, Kansas, Louisiana, Minnesota, Nevada, North Carolina, North Dakota, Oregon, Virginia, Washington, Wisconsin, and Wyoming, though some of these statutes are compulsory only as to certain groups of workers. That of Maine is compulsory as to cities, but optional as to towns.

<sup>4</sup> Clearly elective are the statutes of Alabama, Delaware, Kentucky, Massachusetts, Missouri, New Hampshire, Rhode Island, South Dakota, Tennessee, and Vermont.

<sup>5</sup> In this category are the statutes of Illinois, Kansas, North Dakota, Oregon and Wyoming. The Maryland act is silent as to non-hazardous workers. That of Montana has been construed to be in this class.

<sup>6</sup> See, for example, the statutes of Colorado, Connecticut, Florida, New Jersey, New Mexico, and South Carolina.

<sup>7</sup> The Arizona, Maryland, Michigan, Montana, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, Utah, and West Virginia statutes would appear to fall in this category. In some cases, content has been given by judicial decision, or the language may be readily construed to demonstrate that the act is mandatory. Precise statutory language on the point is, however, lacking.

<sup>8</sup> "Hazardous" or "extra-hazardous" work is the key to the statutes of Illinois, Kansas, Maryland, New Mexico, New York, North Dakota, Oregon, Washington and Wyoming, but such language has usually lead to much litigation over the question as to just what constitutes "hazardous" or "extra-hazardous" work, and also whether such language applies to all employers or only to private employers engaged in private business.

work,"<sup>9</sup> so that, by indirection, other municipal employees are excluded. The division between "employees" and "officials" as found in certain statutes is also apt to lead to much confusion as the descriptive phrases used to define the latter class vary widely,<sup>10</sup> and statutes designed to include all municipal employees of whatever description are relatively rare.<sup>11</sup> When, to these conflicts, is added the problem of the treatment to be accorded to the volunteer municipal worker, whose activities in providing fire or police protection in the smaller political units are often productive of the greatest number of injuries, the picture becomes even less capable of any universal treatment. The want of harmony in statutes and decisions makes formulation of general rules impossible. Reviewing the position of municipal employees or workers as to their right to compensation can, therefore, be done only by considering the individual regulations of the several states.

Alabama, for example, appears to regard an elective system as the most desirable, for its statute provides that "any county, city, town, village or school district" though not bound by the act, may chose to come under its provisions.<sup>12</sup> If election is made, it would seem to cover all employees to whom the employer "directly pays wages."<sup>13</sup> Even so, it must be noted that the description of the employer as quoted above is not broad enough to cover employees of the state government itself, and, as a consequence, the courts of that state have denied protection to the employees of subsidiary agencies of the state government such as the Tennessee Valley Authority.<sup>14</sup>

<sup>9</sup> See, for example, the statutes of Massachusetts, New Hampshire, and Oklahoma.

<sup>10</sup> Thus, from the simple "officials" found in the Illinois statute, the phrase progresses to "an official" in Louisiana; to one "holding an official position" in Michigan, Ohio, South Dakota and Wyoming; to "elective officials" in Arizona, Colorado, and New Jersey; to "officers elected at the polls" in Florida. In South Carolina the phrase reads "except such as are elected by the people," while in Vermont it is "elected by popular vote." Virginia describes them as "elected by the people or elected by the council, or other governing body of said municipal corporation," and the North Carolina statute is about the same. Nebraska and West Virginia attach the qualification that they must have been elected or appointed "for a regular term of office."

<sup>11</sup> Only the Utah and Wisconsin statutes are broad enough to cover all employees including "every elective and appointive officer."

<sup>12</sup> Ala. Code Ann. 1928, § 7543; Code Ann. 1940, Title 26, § 263.

<sup>13</sup> Ibid., § 7596(d); Code Ann. 1940, Title 26, § 262(d).

<sup>14</sup> *Breeding v. Tennessee Valley Authority*,—Ala.—, 9 So. (2d) 6 (1942).

The Arizona act covers public employments,<sup>15</sup> including the "regular members of lawfully constituted police and fire departments of cities and towns," but specifically excludes "elective officials . . . and officials receiving more than \$2400.00 per year salary. . . ."<sup>16</sup> Just who may be a member of a "lawfully constituted" police or fire department may be a difficult question which may require judicial determination, though doubtless the intention was to provide coverage for the employees of regularly incorporated municipalities or towns. The remaining language seems to be clear, even though somewhat unique, yet it required judicial determination, in *Butler v. Industrial Commission of Arizona*,<sup>17</sup> to ascertain whether a city manager whose salary exceeded the statutory limit was an "official" within the meaning thereof, or merely an "employee." The court found him to be an official, hence not entitled to compensation.

The Workmen's Compensation Act of Arkansas is of comparatively recent origin,<sup>18</sup> but it has already been subjected to amendment so as to expressly exclude from its application all political subdivisions of the state.<sup>19</sup> As presently constituted, no problem in regard to public employment can be raised under the amended statute of that state. It is one of three states in that category.

California, on the other hand, has had an extensive experience with the problem of coverage of municipal employees. The present statute is compulsory in operation, and the definition of "employer" found therein<sup>20</sup> would apply to municipalities, but, to make absolutely certain, a specific section deals with public employments.<sup>21</sup> In the same fashion, the definition of "employee" includes "all elected and appointed paid public officials,"<sup>22</sup> terms broad enough to apply not only to employees in the narrow sense, but also to their superiors. Such was not always the case for in *Jackson v. Wilde*<sup>23</sup> a regularly employed fireman

<sup>15</sup> Ariz. Code Ann. 1939, § 56-928.

<sup>16</sup> *Ibid.*, § 56-929.

<sup>17</sup> 57 Ariz. 119, 111 P. (2d) 628 (1941).

<sup>18</sup> Ark. Laws 1939, Act 319, p. 777; Pope's Dig. 1942 Supp., 1090 et seq.

<sup>19</sup> Ark. Laws 1941, Act 121, p. 283.

<sup>20</sup> Cal. Code 1937, Labor Code, Ch. 2, § 3300.

<sup>21</sup> *Ibid.*, § 4155.

<sup>22</sup> *Ibid.*, § 3351.

<sup>23</sup> 52 Cal. App. 259, 198 P. 822 (1921).

of the City of San Diego was deemed not to be an employee within the language of the act then in existence, nor, for that matter, was he an elected public officer. The court placed stress on the fact that he held his office by appointment, governed largely by city ordinance, and was not in service under a contract of hiring. Doubtless the decision is responsible for the present phraseology of the statute. Two applications of the present statute are interesting. In *Los Angeles County v. Industrial Accident Commission*,<sup>24</sup> a deputy marshal serving in a municipal court was held entitled to compensation, but from the city rather than the county. Determination of this fact, the court held, turned upon the right to discharge and, as that function devolved upon the city, it was answerable for the indemnity. In the other case, that of *City of Long Beach v. Industrial Accident Commission*,<sup>25</sup> a private detective employed by a private detective agency was injured while assisting the official police in making an arrest. He was denied compensation on the ground that he had not been hired by the city in accordance with the provisions of its charter. Though the California code is extremely broad, it should be noted that deputy clerks, sheriffs and constables who receive no compensation for their services from the municipal body are denied the benefits of coverage.<sup>26</sup>

The language of the Colorado statute is, likewise, quite broad for it specifically relates to public employments,<sup>27</sup> and covers all except "an elective official of the state, or any county, city, town . . ." while explicitly providing that "policemen and firemen who are regularly employed shall be deemed employees" within the act.<sup>28</sup> It contemplates that every employer of four or more persons shall be presumed to be under the act,<sup>29</sup> although its application may be re-

<sup>24</sup> 123 Cal. App. 12, 11 P. (2d) 434 (1932).

<sup>25</sup> (Cal. App.) 39 P. (2d) 850 (1934), affirmed in 4 Cal. App. (2d) 624, 51 P. (2d) 1089 (1935).

<sup>26</sup> Cal. Code 1937, Labor Code, Ch. 2, § 3352. The exception would seem unusual but for the fact that owners of large estates and ranches frequently deputize their employees so that they may serve as game or fire wardens. Compensation in such situations is recoverable from the private employer.

<sup>27</sup> Colo. Stat. Ann. 1935, Ch. 97, § 287.

<sup>28</sup> *Ibid.*, § 288.

<sup>29</sup> *Ibid.*, § 295.

jected,<sup>30</sup> and, if the employer is under the act, the employee shall be conclusively presumed to have accepted its provisions.<sup>31</sup> The choice of words "regularly employed" as used to qualify policemen and firemen would seem to deny coverage to volunteer firemen, a view partly borne out by the decision in *Board of Commissioners of Eagle County v. Evans*.<sup>32</sup> In that case a juror was injured while serving as such. The court found that he was not working under an "appointment or contract of hire, express or implied" hence was not entitled to compensation.

Like Colorado, the statute of Connecticut, though it applies to employees of the state and its political subdivisions,<sup>33</sup> is not compulsory on the municipalities though it is presumed to apply to all such as have five or more employees<sup>34</sup> unless notice of rejection is given.<sup>35</sup> The definition of employee now includes "any salaried officer or paid member of any police department or fire department of any municipal corporation in the state . . ." <sup>36</sup> but such definition was added closely upon the heels of, and perhaps because of, the decision in the leading case of *McDonald v. City of New Haven*<sup>37</sup> which had held that a regularly appointed member of a city fire department was not an "employee" within the meaning of the act then in force. The court reached such decision by reasoning that a fireman was an officer holding office, that the contractual relationship of employer and employee was lacking, and that if public policy should dictate the contrary view, it was a matter for legislative concern. Following the addition above mentioned, its application was considered in *Lake v. City of Bridgeport*,<sup>38</sup> in which case a special policeman was injured while in the course of his employment. The court there found evidence of legislative intent to change the rule of the McDonald case and, hence, permitted a recovery. A superintendent of bridges was deemed an employee rather than

<sup>30</sup> *Ibid.*, § 296.

<sup>31</sup> *Ibid.*, § 297.

<sup>32</sup> 99 Colo. 83, 60 P. (2d) 225 (1936).

<sup>33</sup> Conn. Gen. Stats. 1930, Ch. 280, § 5223.

<sup>34</sup> *Ibid.*, § 5227.

<sup>35</sup> *Ibid.*, § 5228.

<sup>36</sup> *Ibid.*, § 5223.

<sup>37</sup> 94 Conn. 403, 109 A. 176, 10 A. L. R. 193 (1920).

<sup>38</sup> 102 Conn. 337, 128 A. 782 (1925).



a public officer in *Burrell v. City of Bridgeport*,<sup>39</sup> and even wider application to the act was given in *Massolini v. Driscoll*<sup>40</sup> by allowing the driver of an ash wagon working for an independent contractor, engaged in hauling ashes for a city, to recover. In so doing, the court indicated that the local policy required liberal interpretation of the terms of the statute defining "employer,"<sup>41</sup> hence warranted treating the worker as engaged in the "business" of the city, i. e. collecting garbage.

The situation in Delaware discloses a statute in which the definition of "employer" includes "every corporation (private, public, municipal or public quasi)"<sup>42</sup> and considers "every person in the service of the State of Delaware, of the County of New Castle, or any corporation . . . under any contract of hire, express or implied, oral or written or performing services for a valuable consideration" as an employee.<sup>43</sup> It also extends to the "officers and servants of the Mayor and Council of Wilmington," and other designated municipalities, "who shall have been neither elected for a term of office of fixed and definite duration or to complete the unexpired portion of any such term . . ." <sup>44</sup> but at the same time it excepts certain other municipalities from its operation. The act is not a mandatory one, however, for it specifically provides the manner of election to submit to its terms. There is, at present, no case law elaborating upon the statutory language, but the legislative intent would seem to be designed to confine the application of the statute to rather narrow limits.

Though the statute of Florida expressly covers all public employment with the exception of "officers elected at the polls,"<sup>45</sup> it is optional in its operation for it permits rejection by either the employer or the employee under the circumstances therein stated. It also contains a fairly common provision which specifies that if any policeman, fireman or other person is entitled to a "pension or other benefit fund" to

<sup>39</sup> 96 Conn. 555, 114 A. 679 (1921).

<sup>40</sup> 114 Conn. 546, 159 A. 480 (1932).

<sup>41</sup> Conn. Gen. Stats. 1930, Ch. 280, § 5223.

<sup>42</sup> Rev. Code, Dela., 1935, Ch. 175, § 6112.

<sup>43</sup> *Ibid.*, § 6113.

<sup>45</sup> Fla. Stat. 1941, § 440.02.

<sup>44</sup> *Ibid.*, § 6118.

which the employing municipality has contributed, the amount of the payments therefrom shall, pro tanto, be deducted from the compensation payable under the statute.<sup>46</sup> Here, too, judicial interpretation of the statute on the problems under consideration is lacking.

The neighboring state of Georgia, by contrast, not only extends coverage to the employees of the municipalities and other political subdivisions of the state<sup>47</sup> but has also denied both the employer and employee the right to reject its provisions.<sup>48</sup> As a consequence, numerous decisions exist treating such employees as subject to the provisions of the act.<sup>49</sup> The principal conflict has arisen, however, over the question of whether or not policemen and firemen are "employees" or are officials, in which case they would be outside the law. In deciding that such persons were not "employees,"<sup>50</sup> the Georgia courts have pointed out that positions of this nature are attained and retained through the application of civil service principles hence cannot be regarded as employment in the ordinary sense. The fact that the municipality had procured compensation insurance was, at one time, not sufficient to change this rule,<sup>51</sup> but, by statutory amendment, the existence of insurance is now treated as a direct promise by the "insurer or insurers to the person entitled to compensation."<sup>52</sup> In this respect, it would seem as though any official might recover compensation if the municipality has seen fit to procure insurance even though the statute itself pro-

<sup>46</sup> *Ibid.*, § 440.09. The fact that the employee has also contributed to such fund does not seem to be regarded as enough to entitle him to both sources of compensation.

<sup>47</sup> Ga. Code 1933, § 114-101.

<sup>48</sup> *Ibid.*, § 114-109, states: "Neither any municipal corporation . . . nor any employee of such corporation . . . shall have the right to reject the provisions of this Title relative to payment and acceptance of compensation. . . ."

<sup>49</sup> See, for example, *City of Macon v. Benson*, 175 Ga. 502, 166 S.E. 26 (1932); *City of Atlanta v. Pickens*, 176 Ga. 833, 169 S.E. 99 (1933); *Petty v. Mayor, etc., of College Park*, 63 Ga. App. 455, 11 S.E. (2d) 246 (1940).

<sup>50</sup> As to policemen, see *Marlow v. Mayor & Aldermen of City of Savannah*, 28 Ga. App. 368, 110 S.E. 923 (1922). The rights of firemen are dealt with in *City of Macon v. Whittington*, 171 Ga. 643, 156 S.E. 674 (1931), and *City Council of Augusta v. Reynolds*, 50 Ga. App. 482, 178 S.E. 485 (1935).

<sup>51</sup> *Parker v. Traveler's Ins. Co.*, 174 Ga. 525, 163 S.E. 159, 81 A. L. R. 472 (1932), though two judges dissented on the ground that the insurance carrier should be estopped to deny coverage inasmuch as they had treated the official as an employee. See also *New Amsterdam Casualty Co. v. Griner*, 176 Ga. 69, 166 S.E. 864 (1932).

<sup>52</sup> Ga. Code 1933, § 114-607, added by Acts 1933, pp. 184-5.

vides no protection for him. Under the circumstances, it is not surprising to find the courts giving liberal interpretation to the provisions of the act.<sup>53</sup>

Under the Idaho law every form of municipal worker is entitled to compensation, except judges and clerks of election and jurors, whether regarded as an employee or an official and whether serving as a policeman, fireman or otherwise.<sup>54</sup> The employing municipality is not obliged to secure compensation insurance,<sup>55</sup> for it may make payment of compensation out of current funds.<sup>56</sup> If, however, the employer should elect to insure against the risk it must give the state insurance fund a preference.<sup>57</sup> At present undecided, the problem of the status of a volunteer fireman would seem to call for some consideration for the act is otherwise about as broad as any that may be found.

Considerable confusion exists in the law of Illinois, perhaps partly because of a seeming wish to regard the problems of Chicago as being different from those of the other municipalities of the state and perhaps partly from an apparent desire to afford protection to employees while denying it to officials. It should be noted at the outset that the Illinois statute purports to be automatic in its operation,<sup>58</sup> but it is not universal in its application for it covers "all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous. . . ."<sup>59</sup> From such language it can be seen that a dual standard has been created, one requirement being that the municipality be engaged in an "enterprise or business," and the other being that the claimant must be engaged in one of the "extra hazardous" occupations enumerated. Further qualification is added by the defi-

<sup>53</sup> Thus, in *City of Atlanta v. Pickens*, 176 Ga. 833, 169 S.E. 99 (1933), compensation was awarded to the dependents of a deceased street worker employed as a member of an asphalt gang.

<sup>54</sup> Idaho Code Ann., 1932, § 43-903. In the case of policemen and firemen, however, any compensation is subject to deduction for any amount such individual "may be entitled to receive from any pension or other benefit fund to which the state or municipal body may contribute."

<sup>55</sup> *Ibid.*, § 43-1601.

<sup>56</sup> *Ibid.*, § 43-1609.

<sup>57</sup> *Ibid.*, § 43-1728.

<sup>58</sup> Ill. Rev. Stat. 1941, Ch. 48, § 139, states that the act applies "automatically and without election to the State, county, city, town, township, incorporated village . . . or municipal corporation. . . ."

<sup>59</sup> *Ibid.*

nitions of employer and employee as found therein. While the former term definitely covers a municipality,<sup>60</sup> the latter is limited to "every person in the service of the state, [etc.] . . . except any official . . . and any duly appointed member of the fire department in any city whose population exceeds two hundred thousand. . . ."<sup>61</sup> It is obvious, then, that regular firemen serving the City of Chicago are not covered by the act, but can it be said that those of the smaller municipalities are protected thereby?

The statute does contain the fairly common provision that receipt of benefits from a pension or benefit fund shall limit the recovery to any excess over the amount of such benefits,<sup>62</sup> hence it is open to the inference that there is an implied legislative intention to provide at least partial coverage for such firemen unless they could be said to be "officials" who, as such, are given no protection. Under a former act it was decided, in *City of Chicago v. Industrial Commission*,<sup>63</sup> that firemen were officers rather than employees. A still more recent expression would seem to confirm this view, for in the case of *City of Pekin v. Industrial Commission*,<sup>64</sup> a bridge tender, appointed by the mayor under an ordinance fixing the term of office at one year but requiring confirmation by the city council, was held to be an "official" of the city rather than an employee, hence compensation was denied. In the light of these decisions, it is extremely doubtful if the firemen of the smaller Illinois municipalities are within the ambit of the statute despite the possible inference which may be drawn from its language.

Policemen, in Illinois, do not receive the same express or inferential treatment that is accorded to firemen. Again, the question becomes one of interpreting the word "employee." The status of a regularly appointed police officer was considered in *City of Chicago v. Industrial Commission*<sup>65</sup> and it was there determined that he was an official. Where he is merely a de facto officer, that is one not holding his

<sup>60</sup> *Ibid.*, § 141.

<sup>61</sup> *Ibid.*, § 142. Chicago is the only municipality in the state having a population in excess of the figure named in the statute according to the 1940 census.

<sup>62</sup> Ill. Rev. Stat. 1941, Ch. 48, § 142.

<sup>63</sup> 293 Ill. 188, 127 N.E. 351 (1920).

<sup>64</sup> 341 Ill. 312, 173 N.E. 339 (1930).

<sup>65</sup> 291 Ill. 23, 125 N.E. 705 (1920).

office pursuant to municipal ordinance, he has been regarded as an employee. Thus, in *Johnson v. Industrial Commission*,<sup>66</sup> a special traffic officer, not acting under any ordinance, was treated as an employee so that his death in the line of duty was regarded as a basis for compensation. In much the same way a patrolman in the employ of both the municipality and a merchant's protective association was treated as an employee in *Krawiec v. Industrial Commission*<sup>67</sup> so that compensation was recoverable.

While the Indiana statute expressly includes public employment,<sup>68</sup> applies to all municipal corporations "without any right of exemption from the compensation provisions . . ."<sup>69</sup> and further purports to make the definition of employee cover "every person . . . in the service of another under any contract of hire or apprenticeship, written or implied . . ."<sup>70</sup> it is not as broad as would, at first glance, seem to be the case. Though the statute contains no express exclusion of officials from among those covered, such a meaning has been read into it by judicial decisions<sup>71</sup> on the theory that such persons, when discharging duties imposed on them by law, are exercising a part of the sovereign power of the state and are not, therefore, under "any contract of hire" as required by the statute. Upon this reasoning, it was, at one time the rule that the act did not permit compensation to firemen injured in the course of duty.<sup>72</sup> A breach was made in this doctrine, in 1920, by the decision in *Frankfort General Insurance Company v. Conduitt*,<sup>73</sup> in which case the insurance carrier was found to be estopped from contending that a fireman was an official since they had included his wages in the computation of the premium basis for a compensation policy. In a still more recent case, that of *City of Huntington v. Fisher*,<sup>74</sup> the former doctrine was rejected and the widow of a fireman killed in the discharge of his duties was granted

<sup>66</sup> 326 Ill. 553, 158 N.E. 141 (1927).

<sup>67</sup> 372 Ill. 560, 25 N.E. (2d) 27 (1940).

<sup>68</sup> Burns, Ind. Stat. Ann. 1933, § 40-1701 (a).

<sup>69</sup> Ibid., § 40-1218. See also Acts, 1929, Ch. 72, § 18, p. 536.

<sup>70</sup> Ibid., § 40-1701.

<sup>71</sup> *City of Fort Wayne v. Hazelett*, 107 Ind. App. 184, 23 N.E. (2d) 610 (1939); *Shelmadine v. City of Elkhart*, 75 Ind. App. 493, 129 N.E. 878 (1921).

<sup>72</sup> *City of Fort Wayne v. Hazelett*, 107 Ind. App. 184, 23 N.E. (2d) 610 (1939).

<sup>73</sup> 74 Ind. App. 584, 127 N.E. 212 (1920).

<sup>74</sup> —Ind.—, 40 N.E. (2d) 699 (1942).

a recovery on the ground that the deceased was an "employee" under the act. In arriving at that decision, the court stressed the fact that since firemen are not specifically excluded from either the compensation act or the firemen's pension fund act, they must be, by inference, deemed covered thereby. The reasoning would seem equally applicable to policemen, though the traditional division between "employees" and "officials" would probably be respected as to other officers.

The Iowa statute is compulsory in its application to municipalities,<sup>75</sup> but it expressly excludes "an official elected or appointed by the state, county, school district, municipal corporation, city under special charter or commission form of government,"<sup>76</sup> and denies the benefit of its operation to any person, employed by a municipality, "who may be entitled to benefits" from any fireman's or policeman's benefit fund of such municipality.<sup>77</sup> Though the act seems clear on the latter point, it became necessary for the court, in *Ogilvie v. City of Des Moines*,<sup>78</sup> to declare that only those policemen who are not entitled to a pension can participate in the compensation scheme. In other respects, the courts of that state have shown a tendency to be strict in applying the statute, particularly on the point of whether or not an employer-employee relationship existed at the time of the accident. Thus a county relief worker has been treated as not being such an "employee,"<sup>79</sup> and a person who donated his services in landscaping grounds owned by a city has been denied recovery on the same theory.<sup>80</sup> Volunteer firemen and policemen would, therefore, probably be denied compensation.

The coverage provided by the statute of Kansas, as applied to municipal employees, requires careful analysis. It extends to all employers engaged in hazardous occupations and also to those engaged in "trade or business," who, whether municipal or private employers, are subject to a compulsory application of the statute.<sup>81</sup> Other municipalities

<sup>75</sup> Iowa Code 1939, Ch. 70, § 1362.

<sup>76</sup> *Ibid.*, § 1421.

<sup>77</sup> *Ibid.*, § 1361 (4).

<sup>78</sup> 212 Iowa 117, 233 N.W. 526 (1930).

<sup>79</sup> *Oswalt v. Lucas County*, 222 Iowa 1099, 270 N.W. 847 (1937).

<sup>80</sup> *Norman v. City of Chariton*, 206 Iowa 790, 221 N.W. 481, 28 N. C. C. A. 831n (1928).

<sup>81</sup> Kans. Stat. Ann. 1935, Ch. 44, Art. 5, § 44-505.

may, however, elect to come within its terms and be bound thereby. The definition of "employee," however, stresses the term "workman" or one "who has entered into the employment of or works under contract of service . . . with an employer."<sup>82</sup> For that reason a state police officer has been held not covered since he was not regarded as a "workman."<sup>83</sup> In much the same way, a clerical employee in the office of a city clerk was denied compensation,<sup>84</sup> so it may be inferred that only municipal employees of the laboring class are protected in those municipalities which are forced under the act. In municipalities entitled to an election, the act may still be operative if the municipality engages in a "trade or business." Two cases, both arising in Kansas City, have given content to those words. In one case, *McCormick v. Kansas City*,<sup>85</sup> a workman in a steam-heating plant which furnished heat for the city hall was deemed to be engaged in trade or business as well as a hazardous employment, hence entitled to compensation. In the other, *Simpson v. Kansas City*,<sup>86</sup> a street laborer, injured while breaking up pavement, was denied recovery on the theory that street work was not a trade, business, or proprietary enterprise on the part of the municipality but was rather an exercise of a governmental function.<sup>87</sup>

Kentucky, while expressly including municipalities in the term "employers" as used in the statute,<sup>88</sup> has made that statute purely elective in operation,<sup>89</sup> consequently it can have no operation where election has not occurred. In *Caudill v. Pinsion*,<sup>90</sup> therefore, an injunction was issued against a municipality preventing it from paying the medical expenses of a person injured while assisting a police officer execute a search warrant on the ground that such payment amounted to an unauthorized expenditure of municipal funds

<sup>82</sup> *Ibid.*, § 44-508(i).

<sup>83</sup> *Griswold v. City of Wichita*, 99 Kans. 502, 162 P. 276 (1917). Though the court felt that there was good reason why a policeman should be covered by compensation, it deemed itself bound by the clear language of the statute.

<sup>84</sup> *Udey v. City of Winfield*, 97 Kans. 279, 155 P. 43 (1916).

<sup>85</sup> 127 Kans. 255, 273 P. 471 (1929).

<sup>86</sup> 137 Kans. 915, 22 P. (2d) 955 (1933).

<sup>87</sup> The court expressly refused to follow *Esque v. City of Huntington*, 104 W. Va. 110, 139 S.E. 469, 54 A. L. R. 785 (1927).

<sup>88</sup> Ky. Rev. Stat. 1942 (Baldwin's Current Ed.), § 342.010.

<sup>89</sup> *Ibid.*, § 342.390 and § 342.395.

<sup>90</sup> 233 Ky. 12, 24 S.W. (2d) 938 (1930).

inasmuch as the city in question had not accepted the provisions of the statute. Unless election has occurred, then, the workmen's compensation act of that state will have no bearing on municipal liability to an injured employee.

While the Louisiana statute is compulsory in its application to cities and villages and expressly names them as employers, it also excludes from the benefit of its coverage each "official of . . . any . . . incorporated village or city or other political subdivision. . . ." <sup>91</sup> As to those employees covered, no element of hazard need enter into the service performed so that, in this respect, public employment is dealt with differently from private service, <sup>92</sup> but the "employee" classification has been held within narrow limits. In *Hall v. City of Shreveport*, <sup>93</sup> a policeman appointed pursuant to city charter was deemed a public official rather than an employee on the ground that there was no contract of employment between the city and the officer, the latter being treated as holding his office by reason of appointment by the sovereign. In still another case, that of *Coleman v. Maryland Casualty Company*, <sup>94</sup> a night watchman of an incorporated town was also given an "official" status so as to debar recovery.

The workmen's compensation act of Maine is broad enough to cover municipal employees, but while compulsory as to cities it is merely optional as to towns. <sup>95</sup> As a consequence, it was held, in *Palmer v. Inhabitants of Town of Sumner*, <sup>96</sup> that a road worker who had sued on the theory that the statute had changed the common-law liability of the town could not recover inasmuch as the town in question had not elected to come under its provisions. A highway worker employed by a city, however, was entitled to the benefits of the act, according to the decision in *Tuttle's Case*, <sup>97</sup> which granted recovery to his dependents when he was killed on a

<sup>91</sup> La. Gen. Stat. (Dart), 1939, Ch. 15, § 4391.

<sup>92</sup> *Charity Hospital v. Board of School Directors*, (La. App.) 146 So. 487 (1933), annulling opinion in (La. App.) 140 So. 60 (1932).

<sup>93</sup> 157 La. 589, 102 So. 680 (1925).

<sup>94</sup> (La. App.) 176 So. 143 (1937).

<sup>95</sup> Rev. Stat. Maine 1930, Ch. 55, § 2, makes the statute applicable to such towns as "vote to accept the provisions of this act."

<sup>96</sup> 133 Maine 337, 177 A. 711, 97 A. L. R. 1292 (1935).

<sup>97</sup> 126 Maine 349, 138 A. 559 (1927).



highway construction job. It has also been judicially decided, in that state, that a policeman is an employee rather than an official so that compensation may be awarded for his death or injury in the line of duty.<sup>98</sup>

Only those municipal employees of Maryland who work for wages and who are engaged in "extra-hazardous work" may receive the benefits of the statute of that state, but, as to them, it matters not whether the municipality is engaged in an enterprise for "pecuniary gain or otherwise. . . ."<sup>99</sup> By amendment in 1941, police officers of the state police force and of certain of the smaller political subdivisions are treated as workmen for wages within the meaning of the statute,<sup>100</sup> but the amendment also provides that if equal or better provision be made for the employees by city charter or municipal ordinance then the claimant may not have the benefit of the act. Only one source of compensation is, therefore, provided. Though the statute purports to define extra-hazardous employment, the listing does not appear to be inclusive enough, hence a burden has been placed on the courts of Maryland to determine what is and what is not "extra-hazardous" work within the meaning thereof. They have decided that a nurse in a municipal charitable hospital,<sup>101</sup> a hospital orderly,<sup>102</sup> a janitor,<sup>103</sup> and a janitress<sup>104</sup> are not engaged in activities of the type contemplated.

The statute of Massachusetts comes closest to the original philosophy of workmen's compensation, for, while being purely optional on the part of the employing municipality,<sup>105</sup> it extends only to "laborers, workmen and mechanics" employed by any such municipality.<sup>106</sup> Moreover, it provides that in the event the city has provided a pension fund, the injured employee must elect as to which he will receive as he cannot have both.<sup>107</sup> The interpretation that

<sup>98</sup> *Moriarty's Case*, 126 Maine 358, 138 A. 555 (1927).

<sup>99</sup> Ann. Code Md. (Flack) 1939, Art. 101, § 46.

<sup>100</sup> Laws Md., 1941, Ch. 433, p. 728.

<sup>101</sup> *Mayor and City Council of Baltimore v. Smith*, 168 Md. 458, 177 A. 903 (1935).

<sup>102</sup> *Mayor and City Council of Baltimore v. Trunk*, 172 Md. 35, 190 A. 756 (1937).

<sup>103</sup> *Mayor and City Council of Baltimore v. Schwind*, 175 Md. 60, 199 A. 853 (1938).

<sup>104</sup> *Mattes v. Mayor and City Council of Baltimore*, (Md. App.) 26 A. (2d) 390 (1942).

<sup>105</sup> Ann. Laws Mass. 1933, Ch. 152, § 69.

<sup>106</sup> *Ibid.*, § 74.

<sup>107</sup> *Ibid.*, § 73.

has been given to the terms "laborers, workmen and mechanics" has been rather strict. Though a city janitor has been held to be both a "laborer" and a "mechanic" so as to entitle him to compensation,<sup>108</sup> other employees have not been so fortunate. Thus, in *Devney v. City of Boston*,<sup>109</sup> a "hose-man and a member of a fire company" was treated as a public officer, and, in *Lesuer v. City of Lowell*,<sup>110</sup> a teacher in the automobile department of a vocational school was held not to be a "mechanic" but an instructor, with a consequent denial of recovery in each case. It has, likewise, been held that a "call" fireman on an annual salary of five dollars per year, plus seventy-five cents per hour while on active duty, is not entitled to the classification of laborer.<sup>111</sup>

The history of the Michigan statute discloses that it has undergone many changes, all designed to extend its application to new classes of persons. As presently constituted it applies to "each county, city, township, incorporated village . . . authorized by law to hold property and to sue and be sued generally"<sup>112</sup> and expressly covers "every person in the service of the state or of any county, city, township, incorporated village . . . under any appointment, or contract of hire, expressed or implied, oral or written. . . ." <sup>113</sup> Officials elected at the polls are, however, expressly excepted from coverage. Not only are regular policemen and firemen included in the definition of employees, but even volunteer policemen are regarded as such for the act provides that, for the purpose of computing compensation, volunteer policemen are presumed to receive \$27.00 per week for their services.<sup>114</sup> It is, therefore, not surprising to find decisions permitting recovery of compensation by policemen of incorporated villages<sup>115</sup> as well as those employed by cities.<sup>116</sup> Regular members of municipal fire departments, even to

<sup>108</sup> *White v. City of Boston*, 226 Mass. 517, 116 N.E. 481 (1917).

<sup>109</sup> 223 Mass. 270, 111 N.E. 788 (1916).

<sup>110</sup> 227 Mass. 44, 116 N.E. 483, L. R. A. 1918F 197 (1917).

<sup>111</sup> *Randall's Case*, 279 Mass. 85, 180 N.E. 669 (1932).

<sup>112</sup> Mich. Stat. Ann. 1937, Ch. 150, § 17.145.

<sup>113</sup> *Ibid.*, § 17.147.

<sup>114</sup> *Ibid.*, § 17.147.

<sup>115</sup> *LaBelle v. Village of Grosse Pointe Shores*, 201 Mich. 371, 167 N.W. 923 (1918).

<sup>116</sup> *Lyons v. City of Grand Rapids*, 274 Mich. 588, 265 N.W. 470 (1936); *Millaley v. City of Grand Rapids*, 231 Mich. 10, 203 N.W. 651 (1925); *Walker v. City of Port Huron*, 216 Mich. 361, 185 N.W. 754 (1921).

the fire chief, are employees under the act,<sup>117</sup> but an interesting decision in *Laidlaw v. City of Ludington*<sup>118</sup> has placed "call" firemen in a different category from volunteers. It was there held that a "call" fireman, paid \$33.00 each three months, was to be treated as a regular member of the municipal fire department and compensation computed on his quarterly salary rate rather than the presumed compensation of \$27.00 per week used as the basis for computation in cases of volunteers.

While the Minnesota statute was at one time elective,<sup>119</sup> it has, since 1939, been made compulsory as to all contracts of employment made after the effective date of the amendment then added.<sup>120</sup> As a consequence all municipal employers, including "state . . . county, village, borough, town, city, school district and other public employers,"<sup>121</sup> must provide compensation for their employees other than those officials "who shall have been elected or appointed for a regular term of office or to complete the unexpired portion of any regular term. . . ." <sup>122</sup> Sheriffs, deputy sheriffs, constables, marshals, policemen and firemen are employees within the provisions of the act. It has also been provided that if the "several municipal subdivisions" of the state do not carry compensation insurance they are to be treated as "self insurers."<sup>123</sup> The present statute reflects considerable thought on the part of the draftsmen who prepared the same, and is probably worded to meet the interpretations given earlier statutes by the Minnesota courts,<sup>124</sup> but it is silent on the status of volunteer firemen. In *Stevens v. Village of Nashwauk*,<sup>125</sup> however, it was held that a volunteer fireman who was paid at the rate of \$2.00 for each call was under the act when injured while responding to a call. Another troublesome issue may turn on the question of whether or not the alleged employee had been hired by

117 *Carothers v. City of Stanton*, 257 Mich. 107, 241 N.W. 178 (1932).

118 272 Mich. 11, 261 N.W. 120 (1935).

119 Mason's Minn. Stat. 1927, Ch. 23A, § 4272.

120 Mason's Minn. Stat., 1940 Supp., § 4272-1.

121 Mason's Minn. Stat. 1927, Ch. 23A, § 4326(d).

122 *Ibid.*, § 4326(g) (1).

123 Mason's Minn. Stat., 1940 Supp., § 4272-3.

124 As to policemen, see *State v. District Court*, 134 Minn. 26, 158 N.W. 790 (1916); as to firemen, see *Behr v. Soth*, 170 Minn. 278, 212 N.W. 461 (1927).

125 161 Minn. 20, 200 N.W. 927 (1924).

proper authority. One decision may help clarify that problem, for in *Reed v. Township of Monticello*,<sup>126</sup> where a road patrolman had hired a helper to cut brush but the town board subsequently approved the hiring by paying the helper's wages, the latter was regarded as an employee entitled to compensation.

As presently constituted, the statute of Missouri does not apply to municipal employees unless the municipality elects to accept the provisions thereof "by law or ordinance."<sup>127</sup> Problems may arise under that act, if a municipality does make an election, as to just who will constitute an "employee" within its operation, but at present no decisions exist giving content to that term. Whether it will be held extensive enough to include officials is a matter of some doubt in the light of the general attitude around the country excluding such from compensation benefits unless expressly designated as being entitled thereto.

The language of the Montana act is broad enough to cover municipal employees who are defined therein as being persons employed "under any appointment or contract of hire, expressed or implied, oral or written . . . and appointed paid public officers and officials. . . ." <sup>128</sup> Such statute must, however, be read in the light of the decision in *Moore v. Industrial Accident Fund*<sup>129</sup> which limited the coverage thereof to only those appointed public officers and officials who were engaged in hazardous occupations. Further weakness exists in the statute over the point as to whether or not it is compulsory or elective, and, if compulsory, whether so as to all municipal employees or only those engaged in hazardous work. Internal conflict, produced by the use of loose language,<sup>130</sup> was severely criticized in *City of Butte v. Industrial Accident Board of Montana*,<sup>131</sup> which held the statute compulsory as to municipalities engaging in hazardous enterprises. That decision, by inference, leaves the act elective as to other municipalities. Compensation for vol-

<sup>126</sup> 164 Minn. 358, 205 N.W. 258 (1925).

<sup>127</sup> Mo. Rev. Stat. 1939, Ch. 29, § 3693-4.

<sup>128</sup> Rev. Code Mont. 1935, Vol. 2, Ch. 256, § 2862-3.

<sup>129</sup> 80 Mont. 136, 259 P. 825 (1927).

<sup>130</sup> Compare, for example, Rev. Code Mont. 1935, Vol. 2, Ch. 256, §§ 2840, 2845 and 2846.

<sup>131</sup> 52 Mont. 75, 156 P. 130 (1916).

unteer firemen for disabilities incurred in the performance of their duties is dealt with in a separate statute, enacted in 1935, which creates an independent plan for their protection.<sup>132</sup>

Even though the Nebraska statute applies to municipal employment and expressly includes policemen and firemen, whether volunteer or regular, it denies protection to "any official of the state, or any governmental agency created by it, who shall have been elected or appointed for a regular term."<sup>133</sup> A person who holds office indefinitely, or during good behavior, would, therefore, seem to be included rather than excluded from its operation.<sup>134</sup> Furthermore, for lack of any statutory limitation thereon, it has been held that a covered employee is not barred because he might participate in benefits from another source<sup>135</sup> or has even accepted such other benefits.<sup>136</sup> In 1941, the statute was amended to provide that, in case of injury to a volunteer fireman, the basis for calculating compensation should be the amount of money such individual receives from his regular employment.<sup>137</sup>

Perhaps one of the most comprehensive statutes is that found in Nevada, for it states that where a "state, county, municipal corporation, school district, cities under special charter and commission form of government . . . is employer, the terms, conditions and provisions of this Act . . . shall be conclusive, compulsory, and obligatory upon both employer and employee. . . ."<sup>138</sup> It specifically includes "all elected and appointed paid public officials"<sup>139</sup> and further provides that volunteer firemen are within the terms thereof. For purpose of compensating the latter, the wage base is computed at \$150 per month.<sup>140</sup> The absence of

<sup>132</sup> Rev. Code Mont. 1935, Ch. 392, §§ 5158.1 to 5158.12.

<sup>133</sup> Comp. Stat. Neb. 1929, Art. 1, Ch. 48, § 48-115.

<sup>134</sup> Such was the application given thereto in *Rooney v. City of Omaha*, 105 Neb. 447, 181 N.W. 143 (1920), involving a police officer, and in *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934), involving a fireman, at a time when these municipal servants were not expressly named in the statute as the beneficiaries thereof.

<sup>135</sup> *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934).

<sup>136</sup> *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

<sup>137</sup> Comp. Stat. Neb. 1941, Ch. 48, Art. 1, § 48-126.

<sup>138</sup> Nev. Comp. Laws 1929, § 2680, subsection 1(a).

<sup>139</sup> *Ibid.*, § 2688, subsection 7½(a).

<sup>140</sup> *Ibid.*, § 2688.

case law in that jurisdiction would tend to indicate that the inclusiveness of the statute has eliminated problems which might otherwise arise.

In contrast, the law of New Hampshire is elective as to municipal bodies, since it provides that acceptance of the provisions thereof shall be made "for a town by the selectmen thereof, for a city by the city council or by any board or officer having like powers . . ."<sup>141</sup> and even then the act would seem to apply only to "workmen engaged in manual or mechanical labor" of the type specified in the statute.<sup>142</sup> In the absence of decisions throwing light on the exact scope of the statute, it is impossible to draw any inferences as to the real breadth of coverage granted thereby. It could, however, hardly be considered as protecting elected or appointed officials since no court has deemed them to be within the term "workmen."

New Jersey, by its statute, has seen fit to extend the protection of workmen's compensation to municipal employees, including volunteer firemen,<sup>143</sup> but further provides that "no person holding an elective office shall be entitled to compensation."<sup>144</sup> Acceptance of the provisions of the act is presumed unless affirmative action is taken by either party, following a statutory form of procedure, to reject its terms.<sup>145</sup> Any covered employee is expressly entitled to the benefit of any retirement or pension plan in addition to the benefits conferred by the statute,<sup>146</sup> and the act further specifies that relief workers shall be regarded as engaged in only "casual employment" so far as the municipality is concerned.<sup>147</sup> Though the statute is of fairly broad caliber, it became necessary in *Rogan v. City of Burlington*<sup>148</sup> for the court to decide whether a policeman elected by a city council was a "person holding elective office" within the meaning of the provision denying benefits to such a per-

<sup>141</sup> New Hamp. Laws 1937, Ch. 147, § 4-a.

<sup>142</sup> Pub. Laws New Hamp. 1926, Ch. 178, § 1.

<sup>143</sup> Rev. Stat. N. J. 1937, Title 34, Ch. 15, § 15-75. In case of injury to a volunteer fireman, his compensation is based on the salary or wages he receives from his private employment.

<sup>144</sup> *Ibid.*, § 15-43.

<sup>145</sup> *Ibid.*, § 15-9.

<sup>146</sup> *Ibid.*, § 15-43.

<sup>147</sup> *Ibid.*, § 15-43.1.

<sup>148</sup> 39 N. J. L. J. 214 (1915).

son. It was held that "elective office" meant one to which the incumbent was chosen by the voters of the municipality, hence the court granted compensation to the injured officer.

In New Mexico, the test for the right to compensation is to be found in the fact that the employee must be engaged in "any of the extra-hazardous occupations or pursuits" therein described,<sup>149</sup> but the statute expressly enumerates as within such category all duly elected or appointed peace officers of the state, county or municipality.<sup>150</sup> As to them, while the statute is presumed to be in operation, it may be rejected but such rejection must occur before the injury happens.<sup>151</sup> There is no case law interpreting the statute, but the Attorney General of the state has expressed the opinion that the same does not apply to a volunteer fireman who is without a contract of employment with the municipality.<sup>152</sup>

Judicial interpretation of the New York statute has shifted remarkably in the course of a short period of time. The fundamental premise behind the law of that jurisdiction is the protection of workers in "hazardous" employments, for the definition of employee is "any person working for an employer whose principal business is that of carrying on or conducting a hazardous employment."<sup>153</sup> Though the term employer includes the state, a municipal corporation, or other political subdivision thereof, it is likewise qualified by a reference to "hazardous" employments.<sup>154</sup> Following out such concept of protection to workers in dangerous occupations, the court in *Stoerzer v. City of New York*,<sup>155</sup> denied

<sup>149</sup> N. Mex. Stat. Ann. 1941, § 57-902.

<sup>150</sup> *Ibid.*, § 57-910.

<sup>151</sup> *Ibid.*, § 57-904.

<sup>152</sup> *Opin.*, Attorney Gen., 1931-2, p. 163.

<sup>153</sup> Baldwin's Consol. Laws N. Y. Ann., Vol. 7, Art. 1, § 2(4).

<sup>154</sup> *Ibid.*, § 2. Section 3 of the statute divides employment into a number of groups. Of these, group 17 represents employees of the municipal corporation engaged in hazardous work who, by reason of Art. 4, § 50, are deemed to be protected unless positive rejection has occurred; group 19 includes volunteer firemen of a municipal corporation; while group 20 covers the teachers, regular or substitute, in trade schools in cities having a population of 1,000,000 or more. As to the last two, affirmative election to be bound is necessary. Town superintendents of highways and volunteer firemen are "employees" under the definition laid down in § 2(4).

<sup>155</sup> 267 N. Y. 339, 196 N.E. 281 (1935).

compensation to a city physician who was injured while performing an operation on an inmate of a city prison. That decision was predicated on the ground that the evil aimed at was one involving industrial employees, hence the statute should not be construed to be applicable to municipal employees in the absence of language bringing them within its scope. Six years later, however, the court in *Leahy v. City of New York*<sup>156</sup> granted compensation to an injured reception clerk working in the office of the city Board of Water Supply on the ground that such clerical work was "incidental" to one of the hazardous employments. The court there indicated that coverage of municipal employees was co-extensive with that of private employment. The New York act has also been held not to be limited to pursuits for pecuniary gain, for workers in hazardous occupations connected with the performance of governmental functions have also been granted compensation.<sup>157</sup>

A mandatory statute in North Carolina, at least as applied to the state or any political subdivision thereof, extends protection to "all officers and employees thereof, except such as are elected by the people or elected by the council or other governing body of said municipal corporation . . . who act in purely administrative capacities and who serve for a definite term of office."<sup>158</sup> As applied to employers generally, the act is operative only as to those with five or more employees. A question arose, therefore, in *Rape v. Town of Huntersville*,<sup>159</sup> in which compensation for the death of a town police officer was sought, as to whether that limitation applied also to municipal employers. The court held that a distinction existed between private and public employment by reason of the fact that the statute was mandatory as to the state and the political subdivisions thereof,<sup>160</sup> and it consequently granted recovery.

While the North Dakota statute applies to the state and its political subdivisions, its application is compulsory only

<sup>156</sup> 285 N. Y. 443, 35 N.E. (2d) 34 (1941).

<sup>157</sup> *Hughes v. City of Buffalo*, 208 App. Div. 682, 203 N. Y. S. 391 (1924); *Kittle v. Town of Kinderhook*, 214 App. Div. 345, 212 N. Y. S. 410 (1925).

<sup>158</sup> N. C. Code 1939, Ch. 133A, § 8081(i), subsection (b).

<sup>159</sup> 214 N. C. 505, 199 S.E. 736 (1938).

<sup>160</sup> N. C. Code 1939, Ch. 133A, § 8081 (o).



as to persons engaged in hazardous employment,<sup>161</sup> with reference to whom the employer may, upon contribution to the state fund, insure itself against liability.<sup>162</sup> As to all other employees, the municipality is free to make an election.<sup>163</sup> In 1937 the act was broadened to bring volunteer firemen within the protected class on the same basis as full-time firemen in paid departments,<sup>164</sup> and, in 1941, elected officials of the state and the several counties thereof were added to the class of "employees."<sup>165</sup> In *Fahler v. City of Minot*<sup>166</sup> the widow of a police officer sought compensation for his death occurring in the course of duty. The city defended on the ground of its common-law immunity from liability. Finding that the nature of the employment involved a hazardous occupation and finding that the city had not seen fit to relieve itself from liability by contributing to the state fund, the court denied the defense, saying that the intention of the legislature to provide compensation for all employees engaged in hazardous occupations "seems quite evident from some of the outstanding features of the law under consideration."<sup>167</sup> A night watchman in a village, however, has been denied compensation.<sup>168</sup>

The Ohio statute not only expressly covers the employees of cities and incorporated villages,<sup>169</sup> but in defining the term employees states that it includes "regular members of lawfully constituted police and fire departments" but does not cover any "official."<sup>170</sup> Compensation claims by policemen and firemen are, however, limited to the excess of the compensation allowance above amounts received from any benefit or pension fund. The Ohio act is unusual in that all employers, public or private, are required to contribute to a state insurance fund<sup>171</sup> and this provision has been held

<sup>161</sup> Comp. Laws N. Dak. 1913, 1925 supp., Ch. 5, § 396 (a) (2).

<sup>162</sup> *Ibid.*, § 396 (a) (6).

<sup>163</sup> *Ibid.*, § 396 (a) (12).

<sup>164</sup> Laws N. Dak., 1937, Ch. 178, p. 326.

<sup>165</sup> Laws N. Dak., 1941, Ch. 303, p. 571.

<sup>166</sup> 49 N. D. 960, 194 N.W. 695 (1923).

<sup>167</sup> 49 N. D. 960 at 974, 194 N.W. 695 at 699.

<sup>168</sup> *Bergstrand v. North Dakota Workmen's Comp. Bureau*, 69 N. D. 447, 287 N.W. 631 (1939).

<sup>169</sup> Page's Ohio Gen. Code Ann. 1936, § 1465-60.

<sup>170</sup> *Ibid.*, § 1465-61.

<sup>171</sup> *Ibid.*, § 1465-62.

valid.<sup>172</sup> The scope of the act was under consideration in *Industrial Commission of Ohio v. McWhorter*,<sup>173</sup> where it was held applicable to a municipal relief worker paid partly in cash and partly in groceries, but in *Davis v. Industrial Commission of Ohio*<sup>174</sup> a village marshal was regarded as an "official" hence not within its terms. Though no case can be found on the subject, the Attorney General has rendered an opinion that volunteer firemen are employees of the municipality within the meaning of that term as used in the statute, even when acting outside of the municipal limits.<sup>175</sup> Protection to municipal workers in Ohio is, therefore, fairly extensive.

Progressing to Oklahoma, a statute is there found which circumscribes within narrow limits the classes entitled to coverage, for only municipal workmen in hazardous employments doing "manual or mechanical work" are protected,<sup>176</sup> and then only if engaged in a "trade, business or occupation carried on by the employer for pecuniary gain."<sup>177</sup> Within such limits, it has been held that an occupation ordinarily carried on by a private person for pecuniary gain does not lose its character when carried on by a municipality,<sup>178</sup> but a school district is not a "municipality" within the meaning of the statute.<sup>179</sup> A town marshal serving as a night watchman, though deemed to be engaged in hazardous work, was not regarded as performing "manual or mechanical" labor so failed to recover compensation.<sup>180</sup> An employee engaged in street cleaning was likewise denied a recovery in *City of Muskogee v. State Industrial Commission*,<sup>181</sup> for the court held the municipality was not engaged in street cleaning "for pecuniary gain" but was, rather, performing a governmental function. A plumbing inspector was also denied recovery in

<sup>172</sup> *Porter v. Hopkins*, 91 Ohio St. 74, 109 N.E. 629 (1914).

<sup>173</sup> 129 Ohio St. 40, 193 N.E. 620, 96 A. L. R. 1150 (1934).

<sup>174</sup> 54 Ohio App. 453, 7 N.E. (2d) 829 (1936).

<sup>175</sup> Opin. Atty. Gen. 1940, No. 2520.

<sup>176</sup> Okla. Stat. 1941, Title 85, § 3(4).

<sup>177</sup> *Ibid.*, § 3(5).

<sup>178</sup> *Payton v. City of Anadarko*, 179 Okla. 68, 64 P. (2d) 878 (1937).

<sup>179</sup> *Ponca City Board of Education v. Beasley*, 157 Okla. 262, 11 P. (2d) 466 (1932).

<sup>180</sup> *Mashburn v. City of Grandfield*, 142 Okla. 247, 286 P. 789 (1930).

<sup>181</sup> 150 Okla. 94, 300 P. 627 (1931).

*City of Tulsa v. Hunt*<sup>182</sup> because not engaging in an hazardous occupation and being also engaged in governmental rather than proprietary work. A county road worker, on the other hand, has had the benefit of the statute since his occupation fitted the "hazardous-mechanical" classification, and, at the same time the county was regarded as carrying on work for pecuniary gain.<sup>183</sup> Few courts would agree with the interpretation there given to the words "pecuniary gain" but most would agree with the decision in another case, to-wit: that a male citizen doing road maintenance work pursuant to the terms of a state statute was not an "employee" of the township so was not entitled to compensation therefrom.<sup>184</sup>

Though the preamble of the Oregon law declares that there is broad need for workmen's compensation to avoid resort to common-law litigation and the consequent necessary expense attendant thereon,<sup>185</sup> the statute is compulsory only as to municipalities engaged in hazardous occupations as defined in the act, and even then only if the city has a population of less than one hundred thousand.<sup>186</sup> Included among those engaged in hazardous occupations are "salaried peace officers and firemen of the State, counties and municipal corporations,"<sup>187</sup> but by the same section, any municipal plan of compensation for such workers serves to supersede the statute. Judicial interpretation of that law is, at present, lacking.

The workmen's compensation act of Pennsylvania puts municipalities, the Commonwealth, and all the governmental agencies created by it, in the employer group,<sup>188</sup> but defines employees as synonymous with "servants." It does, however, expressly include volunteer firemen in that category both while "going to and returning from any fire" which the company has attended,<sup>189</sup> though it is careful to deny that

<sup>182</sup> 164 Okla. 262, 23 P. (2d) 640 (1933).

<sup>183</sup> Board of County Commissioners of Tulsa County v. Bilby, 174 Okla. 199, 50 P. (2d) 398 (1935).

<sup>184</sup> Board of Trustees v. State Industrial Commission, 149 Okla. 23, 299 P. 155 (1931).

<sup>185</sup> Ore. Comp. Laws Ann. 1940, Vol. 7, § 102-1701.

<sup>186</sup> Ibid., § 102-1714.

<sup>187</sup> Ibid., § 102-1725(h)(1).

<sup>188</sup> Purdon's Pa. Stat. Ann. (Perm. ed.), Title 77, § 21.

<sup>189</sup> Ibid., § 22.

the employees of independent contractors doing work for the municipality are servants thereof.<sup>190</sup> Perhaps the chief problem in Pennsylvania has been to determine who is and who is not an "employee." In *Bock v. City of Reading*<sup>191</sup> a foreman of the garbage disposal and recovery plant was regarded as such, and, in *Bricker v. Supervisors of Heidelberg Township*,<sup>192</sup> coverage was granted to a township superintendent who was also the road master. Neither of these persons were deemed to be officers. Four volunteer firemen injured when returning from a firemen's convention were, however, denied recovery in another case<sup>193</sup> since the protection afforded them is limited to the period when engaged as firemen or while going to or returning from a fire.

The elective provisions of the Rhode Island act are unusual in that, to make the same applicable to any city or town, a vote of the electors is necessary,<sup>194</sup> but once election has occurred, the procedure is the same as is the case with other employers.<sup>195</sup> The class of employees is, however, limited by the requirement that such persons be ones "whose remuneration does not exceed \$3,000.00 a year" and shall not include the members of "regularly organized fire and police departments of any town or city" or employees of a contractor doing work for it.<sup>196</sup> In reiterating the expression "city or town" the legislature has demonstrated an intent to confine the coverage rather than extend it to other political subdivisions of the state, and, being elective, it can have very limited application to municipal workers. It is not surprising, therefore, that no case law can be found elaborating on the text of the law.

South Carolina, like a number of other states, has had a statute since 1936 naming the state, all political subdivisions,

<sup>190</sup> *Ibid.*, § 441.

<sup>191</sup> 120 Pa. Super. 468, 182 A. 732 (1936).

<sup>192</sup> 120 Pa. Super. 378, 183 A. 61 (1936).

<sup>193</sup> *Shindledecker v. Borough of New Bethlehem*, 145 Pa. Super. 77, 20 A. (2d) 867 (1941).

<sup>194</sup> Gen. Laws R. I. 1938, Ch. 300, Art. 7, § 1. As if to re-emphasize the elective character of the statute, Art. 9, § 1(a), in defining employers includes only a city or town who shall "vote to accept the provisions of this chapter in the manner herein provided."

<sup>195</sup> *Ibid.*, Art. 7, § 7.

<sup>196</sup> *Ibid.*, Art. 9, § 1(b).

and all public and quasi-public corporations as "employers,"<sup>197</sup> and including all municipal workers of whatever character in the definition of "employees" except such as are "elected by the people or elected by the council or other governing body . . . who act in purely administrative capacities and to serve for a definite term of office."<sup>198</sup> The act is presumptively operative though it may be rejected, but to accomplish that end specific notice must be given.<sup>199</sup> Forced labor does not entitle one to coverage, for "city, county or municipal prisoners and convicts" are excluded from benefits.<sup>200</sup> Whether policemen and firemen are covered would depend on the manner of their appointment. If they are not "elected by the people or by the council or other governing body," it would seem that they would enjoy protection, but this issue has not yet been settled by the courts.

Election by the municipality is essential to put the South Dakota statute into operation as to its employees,<sup>201</sup> but once operative it extends to all employees, including constables, marshals, policemen, firemen and volunteer firemen, except officials "elected or appointed for a regular term of office or to complete the unexpired portion of any such term. . . ."<sup>202</sup> Though this latter phraseology may engender some confusion, one fact has been judicially established, to-wit: no person is an "employee" unless he has entered into a contractual relationship with the municipality, not even if his work is done under the supervision of a municipal officer. That point was decided in *Bergstresser v. City of Willow Lake*,<sup>203</sup> in which case a relief client working in a gravel pit to obtain surfacing material for city streets, paid from federal funds, though acting under the supervision of the mayor, was denied a recovery since the court could find no contractual relationship with the city.

Compensation is not granted in Tennessee unless the mu-

197 Code of Laws S. C. 1942, Vol. 4, § 7035-2.

198 Ibid., § 7035-2(b).

199 Ibid., § 7035-4.

200 Ibid., § 7035-16(c).

201 S. Dak. Code 1939, § 64.0102.

202 Ibid., § 64.0102(2)(b). For purpose of compensation, the volunteer fireman's wages are fixed at \$27.50 per week.

203 63 S. D. 386, 259 N.W. 276 (1935).

municipal employer has elected "at least thirty days before the happening of any accident" to accept the terms of the local statute.<sup>204</sup> It is, then, operative as to persons "in the service of an employer . . . under any contract of hire, apprenticeship, written or implied."<sup>205</sup> Since no other specific qualification on the term "employee" appears in the act, any limitations must be found in the judicial decisions of the state. From an examination thereof it appears that a policeman is an "officer" rather than an "employee" under contract of hire, hence will be denied compensation even though the municipality has elected to come under the statute.<sup>206</sup> In the same way, for lack of a contract of hire "written or implied," a relief client working on city streets under the Federal Emergency Relief Administration has been denied compensation in *Shelton v. City of Greeneville*.<sup>207</sup>

Texas is one of the three states which make no statutory provision for the protection of municipal employees since not only is its statute silent on the subject,<sup>208</sup> but it has been judicially held to be inapplicable to them.<sup>209</sup> The doctrine of estoppel has, however, been successfully invoked against insurers who have accepted premiums from the municipality for workmen's compensation policies. Thus, in *McCaleb v. Continental Casualty Company*,<sup>210</sup> it was held that an action on such policy would lie in favor of the employee directly against the insurer. In *Great American Indemnity Company v. Blakey*<sup>211</sup> such an action was also sustained against a stock company on much the same ground, even though the local law permitted the municipality to purchase insurance only in a mutual organization.

The words "employee," "workmen," and "operative" as found in the Utah statute are to be read in the light of a specific provision therein that such words shall include:

<sup>204</sup> Williams' Tenn. Code Ann. 1934, Vol. 4, Ch. 43, § 6856.

<sup>205</sup> Ibid., § 6852(b).

<sup>206</sup> Cornett v. City of Chattanooga, 165 Tenn. 563, 56 S.W. (2d) 742 (1933).

<sup>207</sup> 169 Tenn. 366, 87 S.W. (2d) 1016 (1935).

<sup>208</sup> Vernon's Civil Stat. Tex. Ann., Title 130, Art. 8309, § 1.

<sup>209</sup> City of Tyler v. Texas Employers' Ins. Ass'n, (Tex. Civ. App.) 288 S.W. 409 (1926); *McCaleb v. Continental Casualty Co.*, 132 Tex. 65, 116 S.W. (2d) 679 (1938).

<sup>210</sup> 132 Tex. 65, 116 S.W. (2d) 679 (1938).

<sup>211</sup> Tex. Civ. App., 107 S.W. (2d) 1002 (1937).

Every elective and appointive officer, and every other person, in the service of the state or of any county, city, town or school district . . . under any election or appointment, or under any contract of hire, express or implied, written or oral, including all officers and employees of the state institutions of learning.<sup>212</sup>

It may be seen, therefore, that the act is comprehensive both as to employers and employees, and would seem to be automatic in its operation for nothing is said therein about acceptance or rejection. It does, however, provide that the municipality "may insure in the state insurance fund or pay compensation direct."<sup>213</sup> Despite the apparent breadth of coverage provided, it has been held in Utah that a volunteer fireman gets no protection therefrom,<sup>214</sup> and that a precinct constable working out of a city court is not an employee of that city.<sup>215</sup> On the other hand, a relief worker laboring on city streets was given protection,<sup>216</sup> as was also a city marshal who injured himself while cleaning a gun,<sup>217</sup> both of whom were regarded as municipal employees.

In Vermont, the act is elective in character,<sup>218</sup> and applies to public employments, but then only protects employees other than "public officials who are elected by popular vote or who receive salaries exceeding two thousand dollars a year."<sup>219</sup> It is specific, however, on the point that "policemen, firemen, and others entitled to pensions shall be deemed employees" within the meaning of the statute,<sup>220</sup> but the acceptance of any pension shall reduce, pro tanto, the amount of compensation. The disposition of other possible internal conflicts in the law must remain to be determined since the statute has not yet been subjected to judicial interpretation.

<sup>212</sup> Utah Code Ann. 1943, § 42-1-41(1).

<sup>213</sup> *Ibid.*, § 42-1-46.

<sup>214</sup> *Bingham City Corporation v. Industrial Commission*, 66 Utah 390, 243 P. 113 (1925). Though the decision involved the application of an earlier statute, it turned on a definition of "employee" as used therein which was similar to that used in the present act. The case would, therefore, seem still to be law.

<sup>215</sup> *Rich v. Industrial Commission*, 80 Utah 511, 15 P. (2d) 641 (1932).

<sup>216</sup> *Weber County-Ogden City R. Com. v. Industrial Com'n*, 93 Utah 85, 71 P. (2d) 177 (1937).

<sup>217</sup> *Beaver City v. Industrial Commission*, 67 Utah 8, 245 P. 378 (1926).

<sup>218</sup> *Pub. Laws Vt. 1933*, Title 30, Ch. 264, § 6498.

<sup>219</sup> *Ibid.*, § 6485 (vi).

<sup>220</sup> *Ibid.*, § 6505.

Virginia has a compulsory statute insofar as municipal employment is concerned,<sup>221</sup> but emphasis is placed therein on the fact that it is the "worker" group who are to receive protection, for benefits are extended to all officers and employees "except such as are elected by the people or elected by the council, or other governing body. . . ." <sup>222</sup> Policemen and firemen in municipalities having a population of less than 100,000 are now under the act, so, in that respect, the rule of *Mann v. City of Lynchburg*<sup>223</sup> which regarded a policeman as a public officer rather than an employee, has been partly abrogated. The employees of independent contractors, even though engaged in municipal work, have, however, been denied the benefit of statutory protection since the essential "contract of hire or apprenticeship" required to make one an employee has been found to be lacking in such situations.<sup>224</sup>

Before the municipalities of the state of Washington come within the ambit of the statute of that state they must be found engaging in "extra-hazardous" activities,<sup>225</sup> in which case the law is mandatory in its application. It would also seem to be applicable even if the work is being done by an independent contractor on behalf of the municipality.<sup>226</sup> Included in the definition of "extra-hazardous" employment is the work performed by the "salaried peace officers" of the political unit, but whenever "provision is made for such peace officer injured in the course of employment" the statutory protection shall cease.<sup>227</sup> The material issue in every case would, therefore, seem to be the question as to whether or not the employee is working in a dangerous occupation. In *Reid v. Department of Labor and Industries*<sup>228</sup> a carpenter employed by the Emergency Relief Administration was regarded as being primarily in relief work, hence not in an "extra-hazardous" occupation, but in a later case, where a relief worker was so occupied and municipal funds had

221 Va. Code 1942, Ch. 76A, § 1887(2).      222 Ibid., § 1887(2) (b).

223 129 Va. 453, 106 S.E. 371 (1921).

224 *Bamber v. City of Norfolk*, 138 Va. 26, 121 S.E. 564 (1924); *City of Portsmouth v. Daniels*, 157 Va. 614, 162 S.E. 324 (1932).

225 *Remington's Rev. Stat. Wash.*, Title 56, Ch. 7, § 7674.

226 Ibid., § 7692.

227 Ibid., § 7674(a).

228 194 Wash. 108, 77 P. (2d) 589 (1938).



been appropriated for the performance of the extra-hazardous task, recovery under the act was permitted.<sup>229</sup>

An unusual feature in the act of West Virginia is worthy of notice. The statute requires that "all governmental agencies or departments created by it" shall subscribe to the state workmen's compensation fund,<sup>230</sup> and, failing in this, it deprives the employer of the common-law defenses.<sup>231</sup> While it expressly excludes "any elective or appointive official of the state, whose term of office is definitely fixed by law,"<sup>232</sup> it makes no such specific reference to the officials of municipalities or other political subdivisions of the state. There is, therefore, left in doubt the question whether the officials of the subordinate agencies are protected or not, and such doubt has not yet been resolved by judicial decision. One case, however, is significant. In *Esque v. City of Huntington*<sup>233</sup> a street worker sued in a common-law action for damages because the city had not come under the act in the manner provided. The city contended that, since the work engaged in was of a governmental nature, the act did not apply and the common-law defenses were available to it. In upholding a verdict for the plaintiff, the court pointed out that the prime problem was one of statutory construction, that the decisions of other states were of little value in that regard, and that there was no basis, under the act, for any distinction between municipal work of a proprietary character from that done in the exercise of a governmental function. It said, in the course of the decision, that: "The purpose of the act . . . is to provide compensation for employees, injured while engaged in any sort of work, governmental or industrial. . . ."<sup>234</sup> Such language might, therefore, be construed as broad enough to bring the officials of the subordinate agencies of the state within the terms of the statute.

Proponents of extensive coverage of municipal workers would do well to consider the Wisconsin statute as a model.

<sup>229</sup> *Blake v. Department of Labor and Industries*, 196 Wash. 681, 84 P. (2d) 365 (1938).

<sup>230</sup> W. Va. Code, 1937, Ch. 23, § 2511.

<sup>231</sup> *Ibid.*, § 2518(8).

<sup>232</sup> *Ibid.*, § 2511(1).

<sup>233</sup> 104 W. Va. 110, 139 S.E. 469, 54 A. L. R. 785 (1927).

<sup>234</sup> 104 W. Va. 110 at 113, 139 S.E. 469 at 470.

Expressly applying to municipalities and making the coverage automatic,<sup>235</sup> the statute extends to all municipal workers, whether elected, appointed or hired, including policemen, firemen, and volunteer members of fire companies.<sup>236</sup> To prevent double compensation, however, the act permits the deduction, in cases of policemen and firemen, of any sum received from a pension or benefit fund to which the municipality may have contributed.<sup>237</sup> Judicial construction of the statute has, in general, observed the liberality evident in its language. Thus, in *Village of West Salem v. Industrial Commission of Wisconsin*,<sup>238</sup> a person engaged in assisting the village marshal in suppressing a disturbance was held entitled to compensation inasmuch as he was regarded, for the purposes of the act, as being a policeman since the marshal had the legal right to command such assistance from a private person. Another case, on somewhat similar facts, reached a similar conclusion,<sup>239</sup> and the express statutory language was held sufficient to justify granting a recovery to a volunteer fireman.<sup>240</sup> The element of "hiring" is, however, of importance for, in *Village of West Milwaukee v. Industrial Commission of Wisconsin*,<sup>241</sup> a relief worker doing "made" work for a village was denied the benefits of the statute since he was not serving "under any appointment or contract of hire, express or implied" as required by the act.<sup>242</sup>

Though the statute of Wyoming is compulsory as to municipalities, it extends only to workers engaged in "extra-hazardous" occupations,<sup>243</sup> and defines workmen as persons employed "under a contract of service" but not including those engaged in "clerical work" or those "holding an official position."<sup>244</sup> Statutory enumeration is

<sup>235</sup> Wis. Stat. 1941, § 102.04 and § 102.05. The latter section, however, permits withdrawal.

<sup>236</sup> Ibid., § 102.07.

<sup>237</sup> Ibid., § 102.07(2).

<sup>238</sup> 162 Wis. 57, 155 N.W. 929 (1916).

<sup>239</sup> *Village of Kiel v. Industrial Commission of Wisconsin*, 163 Wis. 441, 158 N.W. 68 (1916).

<sup>240</sup> *City of West Bend v. Schloemer*, 202 Wis. 319, 232 N.W. 524 (1930).

<sup>241</sup> 216 Wis. 29, 255 N.W. 728 (1934).

<sup>242</sup> Wis. Stat. 1941, § 102.07(1).

<sup>243</sup> Wyo. Rev. Stat. 1931, §§ 124-102, 124-103, 124-106, and 124-107(h).

<sup>244</sup> Ibid., § 124-107(i).

provided for the various occupations deemed extra-hazardous, which list was amended in 1941 to expressly include "the occupations of city or town firemen and city or town policemen."<sup>245</sup> It would seem, from the decision in *Leslie v. City of Casper*,<sup>246</sup> that to be entitled to benefits the employee must not only have been hired to serve in one of the extra-hazardous occupations, but that the injury for which compensation is sought must flow directly therefrom. In that case, claimant was injured while impounding animals, and sought recovery not on the ground that the precise work engaged in was extra-hazardous, but rather because he was also employed as a truck driver, an occupation definitely scheduled as such. Recovery was, however, denied on the ground that he was not within the act at the time of the injury.

From this analysis of the statutes and decisions of the several states it is obvious that no general principles can be promulgated on the subject of the relationship of municipal employment to workmen's compensation. A person working in this field should, however, bear in mind that the answer to a specific problem may possibly be arrived at by asking a series of questions.

First: Is the municipality an "employer" within the scope of any given act? In that connection it may be well to determine if it is such by compulsion or by election, bearing in mind that in some cases the act is automatic in operation unless a rejection has occurred and in others the election must take an affirmative form.

Second: Is compensation granted only in hazardous or extra-hazardous situations? If so, is the injured employee one working in or related to such occupations. It should also be remembered that, not infrequently, coverage is granted in such cases only where the municipality is acting in some proprietary capacity, as opposed to exercising a governmental function, or is conducting a "trade or business" for profit.

Third: Is the given worker an "employee" or an "officer?"

<sup>245</sup> Laws Wyo. 1941, Ch. 122, p. 154.

<sup>246</sup> 42 Wyo. 44, 288 P. 15 (1930).

Coverage granted the former is frequently denied to the latter, but to determine just who constitute "officers" may frequently require recourse not only to statutory definitions but also to judicial precedents. It may be said that neither of these terms possess a clear-cut definition.

Fourth: Is the worker one hired and paid by the municipality, so some contractual basis exists between them? If not, it is quite likely that the worker will be treated as a volunteer and denied a recovery unless the statute is specifically designed to protect him.

Even when these questions have been answered satisfactorily, certainty of compensation for the injured worker is not an assured fact, just as a negative answer does not necessarily debar recovery.

Though the trend may be said to be in the direction of a wider application of workmen's compensation laws for the benefit of municipal employees, statutory and case differences are wide, ranging from the most liberal treatment to the most narrow limitation. Full realization of these differences warrants the suggestion that a uniform statute on this topic be adopted. It should, however, be so drafted as to embody the broadest application in order that the progress made in some jurisdictions be not lost.